

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,	}	No. 2802
vs.		
SUI JOY,		
	<i>Appellant,</i>	
	<i>Appellee.</i>	

UNITED STATES OF AMERICA,	}	No. 2801
vs.		
WONG YUEN,		
	<i>Appellant,</i>	
	<i>Appellee.</i>	

UNITED STATES OF AMERICA,	}	No. 2800
vs.		
CHING LUM,		
	<i>Appellant,</i>	
	<i>Appellee.</i>	

BRIEF OF APPELLANT

Upon the Appeal from the United States District Court for the
Territory of Hawaii, in the above entitled cases.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellant.

Filed this.....day of October, 1916.

Filed

OCT 5 - 1916

FRANK D. MONCKTON, Clerk.

F. D. Monckton,

By....., Deputy Clerk.

Clerk.

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,	<i>Appellant,</i>	} No. 2802
VS.		
SUI JOY,	<i>Appellee.</i>	

UNITED STATES OF AMERICA,	<i>Appellant,</i>	} No. 2801
VS.		
WONG YUEN,	<i>Appellee.</i>	

UNITED STATES OF AMERICA,	<i>Appellant,</i>	} No. 2800
VS.		
CHING LUM,	<i>Appellee.</i>	

BRIEF OF APPELLANT

Upon the Appeal from the United States District Court for
the Territory of Hawaii, in the above entitled cases.

Inasmuch as the facts in the above entitled cases are the same with the exception that each case deals with a different name and alien, and inasmuch as the pleadings and the judgments of the Court are the same in each instance, the Government desires to make this brief cover each case.

Statement of Case

On the 18th day of October, A. D. 1913, alien Sui Joy, and the other aliens in the above entitled causes, were arrested under and by virtue of the warrant cabled from the Acting Secretary of Labor, which when translated, reads as follows:

“Arrest following named alien(s) and bring before yourself for hearing, forwarding record of proceedings to the Department.

Alien found receiving, sharing in, or deriving benefits from a part or the whole of the earnings of a prostitute.

Alien found practicing prostitution after entry.”

Following the arrest a petition for a writ of habeas corpus was filed on behalf of the said Sui Joy (as well as the other aliens above mentioned) (Trans. pp. 8-9-10-11).

A demurrer was interposed by the Government but it was overruled by the Court and a writ issued.

The Government then filed a return (Trans. pp. 25-26-27-28-29) and to this return the said Sui Joy interposed a demurrer (Trans. pp. 39-40), which was sustained by the Court by a written opinion (Trans. pp. 49-50-51-52).

In the present case (which applies to the other cases in the above entitled causes) Sui Joy came to the Hawaiian Islands before the said Islands were annexed to the United States, and while the an-

nexation of those Islands did not affect the status of said alien, yet, the lower court held that since said alien was in the Hawaiian Islands at the time they were annexed to the United States, that said alien had never "entered the United States" within the meaning of the law.

Law Involved and Brief Argument of Points Concerned

By sustaining the demurrer to the Government's return, as was done in this case (and also in the other cases) and discharging the said alien, the Court necessarily took the view that the facts of this case did not give the immigration officers jurisdiction, for had the immigration officers jurisdiction, the Court could not have entertained the petition for a writ of habeas corpus until said alien had exhausted his remedies with the Department of Labor.

U. S. vs. Sing Tuck, 194 U. S. 161.

Section 3 of the Immigration Act of February 20, 1907, as amended by the Acts of March 26, 1910, and March 4, 1913, provides:

" * * * Any alien who shall be found an inmate of, or connected with the management of a house of prostitution, or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prosti-

tution, or music or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by Sections 20 and 21 of this Act."

Section 22 of said Immigration Act provides that the Commissioner General of Immigration

"shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act and for protecting the United States and aliens, etc., * * *."

In pursuance to the above authority, the Commissioner General of Immigration has formulated a set of rules for the purpose of carrying into effect the Immigration Laws, and the lower court, in determining the demurrer in this case (as well as in the other cases) adversely to the Government, has given the said rules a wrong interpretation and a prominence uncalled for, and in this connection the Court said:

"It is obvious from a reading of Division 2 of Immigration Rule 22, above quoted, that the Commissioner General of Immigration and the Secretary of Labor, who are authorized by the Immigration Act of February 20, 1907, 34 Stat. 898, Sec. 22, to establish rules for carrying out the provisions of the Act, have construed the Act on the point referred to, as meaning an

actual entry or landing in the United States. The said Division 2 of the 22nd Rule, in providing for an application by the immigration officers to the Secretary of Labor for authority to arrest an alien suspected of being unlawfully in the United States, requires, among other things, that the applicant 'shall be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where the landing occurred) *or a reason given for its absence.*' Of course this can refer to nothing less than an actual landing in the United States."

It is true that the rules referred to above provide that "the application must be accompanied by a certificate of *landing* * * * or a reason given for its absence, in which case effort should be made to supply the principal items of information mentioned in the blank form, provided for such certificate."

It is also true that said Section 3 of the said Immigration Act, in referring to aliens practicing prostitution, says: "*after such alien shall have entered the United States,*" but by using the words "landing" and "entered," Congress certainly did not intend to grant *some* aliens greater rights than others. In other words, Congress never intended to give aliens in the Hawaiian Islands the right to engage in prostitution and at the same time deny aliens in the mainland of the United States that privilege.

The Immigration Act applies to all aliens alike; it matters not whether said aliens are in the Hawaiian Islands or in the mainland of the United States.

In the present case the alien, Sui Joy, was not in the United States, within the meaning of the Immigration Act, or otherwise, until the Hawaiian Islands were annexed August 12, 1898. It was at this time that the said Sui Joy "entered" the United States and the mere fact that he arrived in the Hawaiian Islands in the year 1897, prior to said annexation, does not exempt him from the Immigration Act and give him rights not enjoyed by other aliens.

The charge against the said Sui Joy is one of the most serious provided for in the Immigration Act, and as evidence of this, an alien may be deported on said charge any time he may be found, thus taking him out of the *three years' period* provided for in Sections 20 and 21 of said Act.

Zakonaite vs. Wolf, 226 U. S. 272;

Bugazwitz vs. Adams, 228 U. S. 584.

The provisions of said Section 3 governing the present case (and the other cases), specially eliminate the idea of an entry or a landing by stating "any alien who shall be found an inmate of, or connected with the management of a house of prostitution or *practicing prostitution after such alien*

shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute."

"Entering" the United States refers only to aliens *practicing prostitution*, while the charge against Sui Joy applies to "any alien who shall * * * receive, share in, or derive benefit from any part of the earnings of any prostitute," as well as "practicing prostitution after entry."

Therefore, and in conclusion, the Government desires to emphasize two points; namely, first: that the said Sui Joy entered the United States when the Hawaiian Islands entered through annexation, and second: that the charge placed against the said Sui Joy applies to *any alien* found in the United States, and it matters not under what circumstances he came.

As stated in the beginning, the three aliens referred to in the above entitled causes, were arrested at the same time, subjected to the same treatment, governed by the same pleadings and rulings of the Court, and this brief is written with the idea of covering all three cases.

Respectfully submitted,

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellant.

